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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

MATTHEW DAVID DARR,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SOLANO,

Respondent;

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest.

A148459

(Solano County
Super. Ct. No. FCR 309631)

INTRODUCTION

Petitioner Matthew David Darr was charged with three misdemeanors, including one count of driving under the influence of methamphetamine. As a veteran suffering from substance abuse and post-traumatic stress disorder as a result of his military service, he requested pretrial military diversion under recently enacted Penal Code section 1001.80. The court denied the request for diversion, holding that Vehicle Code section 23640 precludes diversion in any driving under the influence case. We conclude otherwise and grant the petition.

BACKGROUND

Darr was charged with three misdemeanor violations; driving while under the influence of methamphetamine (Veh. Code, § 23152, subd. (e),) possession of

methamphetamine, and possession of a methamphetamine pipe. (Health & Saf. Code, §§ 11377, subd. (a), 11364.) He pled not guilty, and moved for military diversion under Penal Code section 1001.80. There is no dispute that Darr meets the factual prerequisites for diversion under that section. The court held, however, that Vehicle Code section 23640 precludes diversion in driving under the influence cases.

Darr filed a petition for writ of mandamus with the Appellate Division of the Solano Superior Court, challenging the trial court's determination. The Appellate Division denied his petition. Darr then filed the instant petition for writ of mandate in this court. We issued an order to show cause why the petition for writ of mandate should not be granted. We also ordered all proceedings in the trial court stayed pending resolution of this writ petition.

DISCUSSION

The sole issue in this writ proceeding is whether Vehicle Code section 23640 precludes diversion in a driving under the influence case in which the defendant meets the requirements for pretrial diversion for certain current or former members of the military under Penal Code section 1001.80.

Penal Code section 1001.80, enacted in 2014, provides that when a defendant is charged with a misdemeanor, “was, or currently is, a member of the United States military,” and “may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service” the court, “with the consent of the defendant and a waiver of the defendant’s speedy trial right, may place the defendant in a pretrial diversion program” (Pen. Code, § 1001.80, subds. (a), (b).)

Vehicle Code section 23640, effective July 1, 1999, provides that in “any case in which a person is charged with a violation of Section 23152 or 23153 [(DUI and DUI with injury to another)] . . . the court shall neither suspend nor stay the proceedings for the purpose of allowing the accused person to attend or participate, nor shall the court

consider dismissal of or entertain a motion to dismiss the proceedings because the accused person attends or participates, during that suspension, in any one or more education, training or treatment programs, including . . . a treatment program for persons who are habitual users of . . . drugs or other drug-related program.”

“Where two laws on the same subject, passed at different times, are inconsistent with each other, the later act prevails.” (*People v. Bustamante* (1997) 57 Cal.App.4th 693, 701.) And, “[w]hen a general statute conflicts with a specific statute the specific statute controls the general one.” (*People v. Weatherill* (1989) 215 Cal.App.3d 1569, 1577 (*Weatherill*)). “ ‘ “A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions. [Citations.] This rule applies although one of the statutes involved deals generally with a subject and another relates specifically to particular aspects of the subject.” [Citation.] Thus, when ‘ “two codes are to be construed, they ‘must be regarded as blending into each other and forming a single statute.’ [Citation.] Accordingly, they ‘must be read together and so construed as to give effect, when possible, to all the provisions thereof.’ [Citation.] ” ’ ” (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955-956.)

Two cases have addressed whether Vehicle Code section 23640 precludes diversion and reached differing conclusions. In *People v. VanVleck* (2016) 2 Cal.App.5th 355 (*VanVleck*) (pet. rev. filed 9/15/16), the court concluded “military diversion is not available for defendants charged with driving under the influence offenses in violation of sections 23152 and 23153.” (*VanVleck, supra*, 2 Cal.App.5th at p. 358.) The court reached this conclusion largely based on the decision in *Weatherill, supra*, 215 Cal.App.3d 1569.

In *Weatherill*, the court considered whether Penal Code sections 23202 and 23206, the predecessor statutes to section 23640, prohibited diversion under Penal Code section 1001.21, which allowed diversion for developmentally disabled defendants charged with

misdemeanors. (*Weatherill, supra*, 215 Cal.App.3d at pp. 1571-1572.) The court concluded developmentally disabled defendants charged with driving under the influence were ineligible for diversion. It looked to the legislative history of section 23202, which revealed there were “811 misdemeanor diversion programs throughout the state.” (*Weatherill, supra*, 215 Cal.App.3d at p. 1576. italics omitted.) “It was to bar such diverse and voluminous diversion programs that section 23202 was included in AB 541.” (*Weatherill, supra*, 215 Cal.App.3d at p. 1576.) The court further noted that section 23202 was enacted a year earlier than section 1001.21. (*Weatherill, supra*, 215 Cal.App.3d at p. 1578.) Thus, “[s]ince the two statutes conflict, the later statute, section 23202, ‘by implication will be deemed to have repealed any contrary provisions contained in the earlier.’ [Citations.]” (*Ibid.*) Lastly, the court concluded “the subject matter of section 23202 is driving-under-the-influence diversion. It applies to a single type of conduct. . . . Section 23202 is a specific statute and controls, to the extent of their inconsistency, the general statute, Penal Code section 1001.21.” (*Weatherill, supra*, 215 Cal.App.3d 1578, fn. omitted.)

The *VanVleck* court found the *Weatherill* analysis persuasive. “As the court explained in *Weatherill*, ‘[t]he referent of ‘general’ and ‘specific’ is subject matter.’ [Citation.] While [appellants] urge us to look at the classes of people covered by the two statutes at issue to find the military diversion statute is more specific, we must look to the subject matter of the statutes. Like the cognitive developmental disability diversion statute at issue in *Weatherill*, the subject matter of the military diversion statute in this case is misdemeanor diversion. [Citation.] ‘By contrast, the subject matter of section [23640] is driving-under-the-influence-diversion. It applies to a single type of conduct and comprehends only two offenses, sections 23152 and 23153. Section [23640] is a specific statute and controls, to the extent of their inconsistency, the general statute, Penal Code section [1001.80].’ [Citation.] [¶] Although the military diversion statute was enacted 23 years after section 23640, the rule that the more specific statute controls over

a general one prevails over the rule that the later-enacted statute controls.” (*VanVleck, supra*, 2 Cal.App.5th at p. 365.)

In contrast, *Hopkins v. Superior Court* (2016) 2 Cal.App.5th 1275 (*Hopkins*) (pet. rev. filed 10/12/16) addressed the same issue, but concluded “Vehicle Code section 23640 does not bar pretrial diversion for veterans . . . who meet the criteria of section 1001.80 and are charged in a DUI case.” (*Hopkins, supra*, 2 Cal.App.5th at p. 1279.) *Hopkins* acknowledged *VanVleck*, issued three weeks earlier, but disagreed with its analysis. (*Hopkins, supra*, 2 Cal.App.5th at p. 1285.)

Hopkins first addressed the “general-versus-specific rule of statutory construction.” (*Hopkins, supra*, 2 Cal.App.5th at p. 1284.) “ ‘ “It is the general rule that where the general statute standing alone would include the *same matter* as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.” ’ [Citation.] Here, the ‘matter’ covered by section 1001.80 is a specific diversion program applicable only to certain qualifying defendants who are or were members of the United States military, applicable ‘whenever’ a qualifying defendant is charged with a misdemeanor. With that focus, section 1001.80 is clearly more specific than Vehicle Code section 23640, which purports to preclude diversion for all defendants charged with a specific crime (driving under the influence). On the other hand, with a different focus—looking only to the offense with which a defendant is charged—Vehicle Code section 23640 appears to be more specific, because it applies only to driving under the influence whereas section 1001.80 applies to all misdemeanors. In short, unless we are prepared to make an arbitrary choice of focus, the general-versus-specific rule of statutory construction gets us nowhere.” (*Hopkins, supra*, 2 Cal.App.5th at pp. 1283-1284.)

Hopkins concluded because “the rule that a specific statute controls a general statute does not assist us in this case, we must apply the rule that ‘ “later enactments supersede earlier ones.” ’ [Citation.] There is no question that section 1001.80 is the

later enactment; it was enacted in 2014 [citation], while Vehicle Code section 23640 was enacted in the 1981-1982 Regular Session. [Citation.] Thus, we conclude that section 1001.80 supersedes Vehicle Code section 23640 to the extent that the latter statute prohibits pretrial diversion for defendants who meet the criteria set forth in section 1001.80, subdivision (a).” (*Hopkins, supra*, 2 Cal.App.5th at p.1284.)

Hopkins also disagreed with *VanVleck* as to the import of the legislative history. “Unlike the court in *VanVleck*, we find that the legislative history of section 1001.80 supports our conclusion that the Legislature intended section 1001.80 to apply in DUI cases. . . . [¶] In *VanVleck*, the court observed that the legislative history ‘does not mention or resolve the conflict with [Vehicle Code] section 23640’s ban on diversion for driving under the influence offenses. However, we presume the Legislature was aware of the *Weatherill* decision and its interpretation of [Vehicle Code] section 23640 when it enacted the military diversion statute. [Citation.] Had the Legislature intended to depart from the conclusion in *Weatherill* and create an exception to [Vehicle Code] section 23640, it could have easily done so by stating the military diversion statute authorizes pretrial diversion for defendants charged with violations of [Vehicle Code] sections 23152 and 23153.’ (*VanVleck, supra*, 2 Cal.App.5th [355,] 364.)” (*Hopkins, supra*, 2 Cal.App.5th at p. 1284-1285.)

Hopkins also indicated “there are strong indications that the Legislature intended the military diversion program to apply in all misdemeanor cases, including DUI cases.” (*Hopkins, supra*, 2 Cal.App.5th 1285-1286.) The “failure to expressly exempt DUI cases in section 1001.80 stands in stark contrast to prior actions by the Legislature with respect to other diversion programs. As the majority in *Weatherill* noted, after Vehicle Code former section 23202 was enacted, ‘when the Legislature enacted or reenacted diversion programs, e.g., Penal Code section 1001 et seq. (Stats. 1982, ch. 42) and Penal Code section 1001.50 et seq. (Stats. 1982, ch. 1251), in order to avoid the risk of implied repeal, it specifically exempted all driving-under-the-influence charges.’ (*Weatherill*,

supra, 215 Cal.App.3d at pp. 1579–1580.) That the Legislature did not do so here supports our conclusion that it did not intend that Vehicle Code section 23640 would bar pretrial diversion under section 1001.80 in DUI cases.” (*Hopkins, supra*, 2 Cal.App.5th at p. 1287.)

Hopkins concluded “In short, we find the legislative history supports our conclusion that, by enacting section 1001.80, the Legislature impliedly repealed Vehicle Code section 23640 to the extent it prohibits pretrial diversion for defendants who meet the qualifications of section 1001.80, subdivision (a).” (*Hopkins, supra*, 2 Cal.App.5th at p. 1288.) We agree with the *Hopkins* court’s analysis of the legislative history and intent.

Accordingly, we grant Darr’s petition. The order to show cause is discharged. Let a peremptory writ of mandate issue directing the Appellate Division of the Solano County Superior Court to vacate its order denying Darr’s petition for writ of mandate, and to enter a new and different order granting the petition. The previously ordered stay of the superior court proceedings shall be dissolved upon issuance of the remittitur in this case.

REARDON, J.

We concur:

RUVOLO, P. J.

STREETER, J.